No. 15027

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HERALD PUBLISHING COMPANY OF BELLFLOWER, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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STATEMENT OF THE CASE

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Section 151, *et seq.*),[1] for the enforcement of its order issued against respondent on September 16, 1955, following proceedings under Section 10 of the Act. The Board's decision and order (R. 129-134)[2] are reported at 114 NLRB No. 23. This

[1] The relevant provisions of the Act are printed in the Appendix, *infra*, pp. 22-24.

[2] References designated "R" are to the pages of the printed record. Whenever in a series of references a semicolon appears, the references preceding the semicolon are to the Board's findings, and those following are to the supporting evidence. Occasional references to "G. C. Ex." are to General Counsel's exhibits.

Court has jurisdiction of the proceedings, the unfair labor practices having occurred in the State of California within this judicial circuit.

I. The Board's Finding of Fact

Briefly, the Board found that respondent, in violation of Section 8 (a) (1) of the Act, interrogated its employees as to their union activities, granted them wage increases to deter organizational activities, and otherwise coerced and restrained them in the exercise of rights guaranteed to them by Section 7 of the Act. The Board also found that respondent violated Section 8 (a) (1) and (3) of the Act by its discriminatory discharge of employees London, Ross, Hickey, and Farley. The findings and supporting evidence are detailed below.

A. The operations of the employer

Respondent, a California corporation, has its principal place of business at Compton and is engaged in the publishing of a newspaper known as the Herald American (R. 23; 148-149).[3] The Herald American is a semi-weekly publication which appears in nine editions on Thursday and seven editions on Sunday (R. 23; 176). It also publishes a weekly supplement known as the "Garden and Home Magazine" (R. 23; 176). The circulation of the Thursday editions is approximately 142,000 while the circulation of the Sunday issue is smaller (R. 24; 175). No copies of the Herald American are sent to points outside the State of California, the readers being apparently confined to the

[3] Offices are also maintained in various other communities and are staffed by editorial and advertising employees (R. 24; 191-192).

Los Angeles County communities for which the respective editions are named. (R. 24; 211, 331, 356). However, the Herald American subscribes to and receives each week news letters issued by the United Press, an interstate news service, and occasionally uses United Press data in its publications (R. 27; 144-145, 180-181, G.C. Ex. 3).

Respondent's annual gross income from the publication of the Herald American exceeds $500,000.[4] A substantial portion of this income is derived from advertising accounts (R. 25; 159-160). Among the accounts were those which advertised practically every make of popular car, including Ford, Chevrolet, Studebaker and Packard, and which were solicited by the Herald American from advertising agencies and local automobile dealers (R. 25; 152-153). The newspaper also advertised other nationally sold products such as household appliances, electric shavers, canned vegetable and meat products, watches and women's apparel, which were marketed by such well-known manufacturers as Radio Corporation of America, Bendix, General Electric, Sunbeam, Ronson, Schick, Westinghouse, Elgin, Libby, Gerber and Playtex (R. 131; 157, G. C. Ex. 18).

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[4] The Board observed that respondent in its brief noted that its gross income for 1954 amounted to $1,714,377.68 (R. 130). For the convenience of the Court a copy of respondent's brief has been lodged with the Clerk.

B. The unfair labor practices [5]

1. *Respondent's campaign of interference, restraint and coercion*

The American Newspaper Guild, CIO, herein called the Union, commenced its campaign to organize respondent's employees in the spring and summer of 1954 (R. 56; 329-330). Early in the organizational drive Leonard Lugoff, manager of respondent's classified advertising department, approached Gloria Hickey, an employee under his supervision, and asked her if she had any connection with the Union (R. 64; 330). Hickey replied that she did not, whereupon Lugoff remarked that he hoped that Hickey was not involved with the Union as it would mean immediate dismissal (R. 64; 330). Lugoff told Hickey that he was aware of union activities in the plant and that C. S. Smith, respondent's president, had instructed him to find out who was responsible and, if necessary, to discharge all the employees in his department (R. 65; 330).

On July 12, 1954, employee Raymond Ross and W. W. Butler, respondent's managing editor, attended a Chamber of Commerce meeting (R. 92; 345). As they were leaving the meeting place, Butler engaged Ross in conversation and asked, "I hope you haven't been sucked into this Guild, have you?" (R. 92; 345). Ross replied, "Guild—what do you mean?" (R. 92; 345). Butler stated that he was referring to a newspaper guild and after taking a Guild membership application

[5] Many of the findings detailed hereunder are based on conflicting testimony which the Trial Examiner, upon observation of the witnesses and careful analysis of the evidence, resolved. The Board, upon its independent appraisal of the record, adopted the Trial Examiner's findings and credibility resolutions.

from his pocket and showing it to Ross, he remarked, "One of my boys was approached with this and of course he brought it to me right away and I just wondered if you had been connected with it" (R. 93; 345). Ross then replied, "No, I guess I am too new. I guess they do not trust me" (R. 93; 345).

As set forth more fully *infra,* on July 17 respondent discharged employee Sol London. Within an hour of his discharge employee Oney Fleener met Butler on the street and remarked that London had informed him that he had been discharged because he was a union member (R. 87; 242). Upon hearing this, Butler told Fleener that London had been discharged "because he was working for the union instead of working for the newspaper." (R. 87; 242).

On July 18, respondent, notwithstanding a claim of poor financial condition, granted a wage increase to all but two of the nonsupervisory employees on the editorial staff (R. 67; 300). The amount of these increases ranged from $5 to $15 per week (R. 67; G. C. Exh. 6).

About the same time employee Sheets, upon returning to his home one afternoon after work, found Louis Murray, respondent's sales manager, there (R. 57; 247). When Murray stated that he had come to see if a union meeting was in progress, Sheets inquired as to the reason for such an assumption (R. 58; 247). Murray replied that he had heard him invite Ross to come to his home "to pitch horse shoes" and that "he had assumed that 'horse shoes' was the code word to signify the intention of calling a union meeting" and that he had come to verify it (R. 58; 247). Murray then apologized for his misapprehension (R. 58; 247).

Respondent discharged Ross on August 17 (*infra,* pp. 7-8). A short time later, Robert Clark, general manager of respondent's Lakewood-Los Altos edition, in discussing Ross' discharge with employee Maxine Galt, told Galt that Ross had worn a union button at work and that he had informed Smith, respondent's president, that he "would not work with any union member" and that unless Ross was discharged he would leave respondent's employ (R. 111; 229).

2. *The discriminatory discharges*

a. Sol London

London was hired by respondent as a reporter in July 1950, and was assigned to the Compton office (R. 77; 375). In July 1953, he was transferred to the North Long Beach office (R. 77; 376). During his four years of employment he received a number of wage increases, the last in March 1954 (R. 77; 376).

In the Spring of 1954, London began to engage in organizational activities on behalf of the union (R. 79-80; 401-402). He discussed the benefits of a union with various employees and asked them to sign application cards (R. 80; 402). Among those with whom he discussed the union's organization was Jack Cleland, whose membership he solicited on July 10 (R. 80; 382).

On the morning of July 17, London was advised of his discharge by Butler, respondent's managing editor (R. 81; 383). When London asserted that it was not right to be discharged without notice or explanation Butler remarked, "I cannot tell you why." (R. 85; 383). And when London asked for a further explanation Butler replied, "All I can say is that you thought more about other things than you did of the paper"

(R. 85; 384). London then stated that he was not satisfied with this explanation and thereafter Butler told him he should see Smith, respondent's president (R. 85; 384).

Later in the day London discussed his discharge with Smith at which time Smith informed London that he had not been satisfied with London's "political reporting." (R. 86; 385). When London asked Smith to explain what "reporting" he was referring to Smith replied, "Oh, well, just generally speaking" (R. 86; 385). London then asked Butler, who was also present, why this alleged deficiency had not been mentioned to him during the preceding two weeks (R. 86; 385). Butler replied, "Well, there had been a general deterioration" (R. 86; 385). London then told Smith that he did not think it right that he should be discharged without notice after four years service (R. 86; 385). Upon hearing this complaint, Smith indicated that respondent would give London two weeks' pay instead of notice (R. 86; 386). London departed shortly thereafter (R. 86; 386).

b. Raymond Ross

Respondent hired Ross in March 1954, as city editor of the Lakewood edition (R. 92; 344). Shortly thereafter Ross made application for membership in the union (R. 94; 344).

As related *supra,* pp. 4-5, on July 12, Butler asked Ross if he had joined the union. During the conversation Butler showed Ross a union membership application which one of the employees had brought him. On August 17, Ross reported for work wearing a union button which was about an inch in diameter and which

bore an insignia and the name "The American Newspaper Guild" in black lettering on a white field (R. 94; 351). The union button was affixed to the upper portion of his shirt pocket and Ross wore no jacket that day (R. 94; 351). Late in the afternoon Butler informed Ross that he was being discharged, indicating that it was an economy measure (R. 94; 346). Ross then pointed to his union button and remarked, "of course, I know and you know that I am being discharged because I am wearing this Guild button" (R. 95; 346). Butler again asserted that Ross' discharge was for economy reasons but stated that Ross could interpret that any way he wished (R. 95; 347). Ross then asked Butler if he should "finish out the rest of the edition" and Butler replied that he should discuss that with Smith (R. 95; 349). Ross telephoned Smith and asked the reason for his discharge. The latter stated that it was due to an "economy drive" as he had insisted "on a retrenchment" three or four weeks earlier (R. 95; 347). Smith stated that three or four persons had been laid off and that in this cut back Ross was selected because he "was the newest employee in the department" and that if "business warranted it," respondent would rehire him (R. 96; 348). Ross then finished his work on the edition and was given his separation pay (R. 96; 352). Respondent has never recalled Ross (R. 96; 348).

c. Gloria Hickey

Hickey commenced her employment with respondent in March 1954, and was assigned to classified advertising work in the Bellflower office (R. 97; 329). As previously stated (p. 4), during the month of July, she was asked by Lugoff, her immediate superior, if she

was associated in any way with the union. Lugoff also warned Hickey that union membership would mean immediate dismissal and that Smith, respondent's president, had authorized him to discharge all employees should it become necessary. On the afternoon of August 16, Hickey wore a union button at work (R. 97; 333). That evening there was a union meeting at Hickey's home (R. 97; 318). On the following day Hickey again wore her union button on the job (R. 97; 333). At the end of the day, according to custom, Hickey telephoned Lugoff, who was then at the Compton office, to report her business volume for the day (R. 97-98; 330). Lugoff asked Hickey if she would wait for him at the office as he wanted to discuss something with her (R. 98; 330). Hickey requested that the meeting be deferred and Lugoff agreed to see her the next morning (R. 98; 331).

About nine o'clock on the following morning Lugoff came to the Bellflower office (R. 98; 331). Lugoff gave Hickey her pay check and stated that Smith had "ordered" her discharge as an economy measure (R. 98; 331). Hickey told Lugoff that she believed her discharge was actually due to the fact that she was wearing a union button, and that she was not so "stupid" as to believe the reason Lugoff assigned for her dismissal (R. 98; 331, 336). Lugoff then told Hickey that her work had been satisfactory and that he regretted her discharge (R. 98; 337). Lugoff went on to say that there was no personal feeling involved but "he was sorry if [Hickey] was mixed up in the Guild because that (sic) they would not be able to do anything for [Hickey]" (R. 98; 337). Hickey then remarked that she did not believe she could be discharged for union activities (R. 98; 337). Upon hear-

ing this, Lugoff stated that he had "a situation" similar to this several years ago but "nothing ever came of it" (R. 98; 337). Lugoff continued by saying, "They [the Guild] can't do anything for you (R. 99; 337).

d. Doris Farley

Farley was employed by respondent on June 28, 1954 (R. 97; 315). She worked as a PBX operator and cashier in the Bellflower office (R. 97; 315). Farley attended the union meeting at Hickey's home on August 16, and the next day she appeared at work wearing a union button which she attached to her belt (R. 97; 318).

When Lugoff came to the office on August 18, for the purpose of discharging Hickey, Farley asked him if she also would be discharged as she too was wearing a union button (R. 99; 320). Lugoff replied that he was not her superior but a few minutes later, after Lugoff made a telephone call, Murray, respondent's sales manager, arrived at the office (R. 99; 320). Murray gave Farley her pay check and stated that she was being terminated because of economic reasons (R. 99; 320). When Farley asserted that she did not believe that to be the real reason, Murray stated, "If economic measures doesn't hold up, we will go into the efficiency of your work" (R. 99; 321).

II. The Board's Conclusions and Order

Upon the above facts and the entire record, the Board unanimously agreed with the Trial Examiner that respondent had interfered with, coerced and restrained its employees in violation of Section 8 (a) (1) of the Act. In particular, this finding was based on: (a) Lugoff's interrogation of employee Hickey con-

cerning the Union; (b) his statement to Hickey that employees who were union members would be dismissed immediately and that President Smith had instructed him to determine who was responsible and, if necessary, to discharge all employees in the department; (c) Butler's interrogation of employee Ross concerning the Union; (d) his statement to employee Fleener that employee London had been discharged "because he was working for the union instead of working for the newspaper"; (e) Clark's statement to employee Galt that he had informed Smith that he would not work with a union member and that he would quit unless Ross was discharged; (f) the granting of the wage increase in order to deter organizational activities; and (g) Murray's attempted surveillance of a union meeting and his stating to Sheets the purpose of his visit. (R. 130).

The Board and the Trial Examiner further found that respondent had discharged employees London, Ross, Hickey, and Farley because of their union sympathies and activities and not for the reasons advanced by respondent, thereby violating 8 (a) (1) and (3) of the Act (R. 130, 91, 112, 121).[6]

The Board's order directs respondent to cease and desist from the unfair labor practices found and from in any other manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act (R. 131-132). Affirmatively, the Board ordered respondent to reinstate employees London, Ross, Hickey, and Farley with back pay and to post the usual notices (R. 133).

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[6] Respondent filed no specific exceptions to the Trial Examiner's findings in respect to the wage increase and the discharge of Ross.

ARGUMENT

I. The Board Properly Asserted Jurisdiction Over the Unfair Labor Practices Here Involved

Undisputed evidence (*supra,* p. 3) establishes that respondent's annual gross income from publication of its newspaper exceeds $500,000 and that a substantial portion of the income derives from advertising accounts which include such products as Ford, Chevrolet, Studebaker, and Packard as well as many other nationally sold products. It is also undisputed that respondent subscribes to and receives weekly news letters from United Press, an interstate news service. These facts alone, we submit, demonstrate that respondent's operations affect commerce within the meaning of the Act. Accordingly, the determination whether to assert jurisdiction lay exclusively within the Board's discretion. See *N.L.R.B.* v. *Smith,* 209 F. 2d 905, 907 (C.A. 9); *N.L.R.B.* v. *Daboll,* 216 F. 2d 143, 144 (C.A. 9), certiorari denied, 348 U.S. 917.

Respondent, however, urges that the Board misapplied its applicable jurisdictional standards. The contention, even to the extent it is material, lacks merit. The Board in 1954 set forth new criteria for the assertion of jurisdiction. In *Daily Press, Incorporated,* 110 NLRB 973, the Board stated "that in future cases the Board will assert jurisdiction over newspaper companies which hold membership in or subscribe to interstate news services, or publish nationally syndicated features, or advertise nationally sold products, if the gross value of business of the particular enterprise involved amounts to $500,000 or more per annum." As already shown, respondent's business meets these requirements.

Respondent's reliance upon the Board decisions in *Wave Publications, Inc.,* 106 NLRB 1064, *Mutual*

Newspaper Publishing Co., 107 NLRB 642, and *J. Weiss Printers,* 92 NLRB 993, is misplaced. Those decisions were issued pursuant to earlier jurisdictional standards promulgated in 1950 and supplanted in 1954 by the *Daily Press* case, *supra.* Moreover, in *Press, Inc.,* 91 NLRB 1360, decided in 1950, the Board made it plain that it would assert jurisdiction even under the 1950 jurisdictional standards where, as here, the newspaper involved subscribed to an interstate news service. Respondent was in no wise misled therefore as to the Board's power or willingness to assert jurisdiction over its operations. Cf. *N.L.R.B.* v. *Guy F. Atkinson Co.,* 195 F. 2d 141 (C.A. 9); and see *N.L.R.B.* v. *Forest Lawn,* 206 F. 2d 569, 571 (C.A. 9), certiorari denied, 347 U.S. 915. For the same reason respondent can draw no comfort from the fact that the Daily Press decision upon which the Board relies was not issued until after it engaged in the acts here found to constitute unfair labor practices.

II. Substantial Evidence On the Record Considered As a Whole Supports the Board's Conclusion That Respondent Interfered With, Restrained, and Coerced Its Employees In Violation Of Section 8 (a) (1) Of the Act

The facts summarized above (*supra,* pp. 4-6) establish that respondent interrogated its employees concerning their union activities, threatened to discharge those employees who were union members, warned that employees had been discharged because of their union activities and that supervisors would not work with union members, granted wage increases to discourage union activity, and attempted to engage in the surveillance of a union meeting.[7] That such conduct con-

[7] As already noted (*supra,* n. 5) many of the findings here made were based on conflicting testimony which the Trial Examiner and

stitutes interference, restraint and coercion violative of Section 8 (a) (1) of the Act is too well-settled to require discussion. See, e.g., *N.L.R.B.* v. *West Coast Casket Co.,* 205 F. 2d 902, 905 (C.A. 9); *N.L.R.B.* v. *Parma Water Lifter Co.,* 211 F. 2d 258, 262 (C.A. 9), certiorari denied, 348 U.S. 829; *N.L.R.B.* v. *Geigy Co.,* 211 F. 2d 553, 557 (C.A. 9), certiorari denied, 348 U.S. 821; *N.L.R.B.* v. *Wagner Transportation Co.,* 227 F. 2d 200, 201 (C.A. 9), certiorari denied, 351 U.S. 919; *N.L.R.B.* v. *Grand Central Aircraft Co., Inc.,* 216 F. 2d 572, 573 (C.A. 9).

Contrary to respondent's contention, Butler's interrogation of Ross satisfies the rule that "interrogation regarding union activity does not in and of itself violate Section 8 (a) (1) * * * [and that] such interrogation must either contain an express or implied threat or promise, or form part of an overall pattern whose tendency is to restrain or coerce." *N.L.R.B* v. *McCatron,* 216 F. 2d 212, (C.A. 9), certiorari denied, 348 U.S. 943. Here, the interrogation was conducted by a supervisor who was well aware of the union activities in the plant and openly admitted that employees had been discharged because of their union sympathies. Moreover, the interrogation was followed by the discriminatory discharge of Ross and three other employees. Cf. *N.L.R.B.* v. *Chautauqua Hardware Co.,* 192 F. 2d 492, 494 (C.A. 2).

Respondent's further contention that Murray's attempt to engage in surveillance was not a violation of the Act because no union meeting was in progress, is without merit. Although no meeting was being con-

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the Board resolved adversely to respondent. "For obvious reasons questions of credibility were for the Examiner." *N.L.R.B.* v. *State Center Warehouse,* 193 F. 2d 156, 157 (C.A. 9); *N.L.R.B.* v. *Dant,* 207 F. 2d 165, 167 (C.A. 9).

ducted Murray informed Sheets at the outset of the purpose of his visit, thereby impressing upon at least one employee respondent's readiness to engage in unlawful surveillance of its employees' organizational activities. Moreover, under settled authority, it is "not necessary to show duress but only interference, and it is not necessary that the interference shall be successful." (*Rapid Roller Co.* v. *N.L.R.B.,* 126 F. 2d 452, 457 (C.A. 7), certiorari denied, 317 U.S. 650). "The test is whether the employer engaged in conduct which it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *N.L.R.B.* v. *Illinois Tool Works,* 153 F. 2d 811, 814 (C.A. 7).

Accordingly, the Board properly concluded that respondent, independently of its violations of Section 8 (a) (3), violated Section 8 (a) (1) of the Act.

III. Substantial Evidence on the Record Considered as a Whole Supports the Board's Conclusion that Respondent Discriminatorily Discharged Employees London, Ross, Hickey, and Farley in Violation of Section 8 (a) (1) and (3) of the Act

The evidence summarized above (*supra,* pp. 6-10) fully supports the Board's conclusion that the discharges of London, Ross, Hickey and Farley were discriminatorily motivated.

A. London

As previously related, London during the spring of 1954, became active in the union's organizational activities. He discussed the benefits of a union with respondent's employees and requested that they sign union application cards. Butler, respondent's managing editor, was aware of London's union activities having admittedly received information, which he characterized as

"vague" and "indirect" that London "had been spending working time" at the plant "soliciting membership for the Union" (R. 81; 251-252).

During his four years in respondent's employ London had received several wage increases, the last as late as March 1954. Nevertheless, despite London's apparently satisfactory work record Butler, on July 17, discharged London without notice. When London attempted to learn the reason for this sudden action Butler stated, "I cannot tell you why." London then pressed Butler for a fuller explanation and Butler remarked, "All I can say is that you thought more about other things than you did of the paper." At Butler's suggestion, London then sought out Smith, respondent's president, for an explanation. Smith informed London that he had not been satisfied with the latter's "political reporting," and when London asked Smith to explain what he meant by "reporting," Smith replied, "Oh, well, just generally speaking." At the hearing, respondent advanced none of these inconsistent reasons as the cause for London's discharge, Butler testifying that he had discharged London because he had left his work early on a certain Thursday (R. 81, 252). However, London had earlier informed Butler that he was leaving early on Thursday afternoons and the latter had given his approval (R. 82; 392).[8]

It is well established that the giving of evasive, inconsistent or contradictory reasons by an employer for the discharge of an employee may be considered, as it was in the instant case, in determining the real motive which actuated the discharge. See *N.L.R.B.* v. *Home-*

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[8] After learning of London's practice of leaving early Butler remarked, "I know that as well as you and as long as you turn in your copy, that is all we require" (R. 82; 392).

dale Tractor and Equipment Co., 211 F. 2d 309, 314 (C.A. 9), certiorari denied, 348 U.S. 833; *N.L.R.B.* v. *International Furniture Co.,* 212 F. 2d 431 (C.A. 5). Moreover, within an hour of London's discharge Butler told Employee Fleener that London had been discharged "because he was working for the union instead of working for the newspaper." Under all these circumstances and with a background of other unlawful interference and discrimination, the Board could reasonably find, as it did (R. 91), that London's discharge was discriminatorily motivated within the meaning of Section 8 (a) (3) and (1) of the Act.

B. Ross, Hickey and Farley

Similarly well supported is the Board's finding that employees Ross, Hickey, and Farley were discriminatorily discharged. As we have shown, on July 12 Butler asked Ross if he had joined the union. Butler indicated that a certain employee had presented him with a union membership application and that as a consequence he was interested in learning Ross' union status. Five days later, on August 17, Ross came to work in the morning wearing a union button affixed to the upper portion of the pocket of his shirt. Ross wore no jacket on that day. In the afternoon Butler told Ross that he was being discharged for economy reasons. Upon hearing this, Ross pointed to his union button and stated, "of course, I know and you know that I am being discharged because I am wearing this Guild button." Butler maintained his original position but told Ross that he could interpret that any way he wished.

During the month of July, Hickey was questioned by Lugoff, her supervisor, in respect to her union status. In the course of the conversation Lugoff told

Hickey that union membership would cause immediate dismissal and that he had the authority to discharge all the employees if it was necessary. On the afternoon of August 16, Hickey wore a union button at work and that evening there was a union meeting at her house. On August 17, Hickey again wore her union button on the job. At the close of the day, when Hickey telephoned Lugoff to report her business volume for the day, Lugoff informed her that he wanted to see her. At Hickey's request, they did not meet until the following morning at which time Lugoff gave Hickey her pay check and stated that Smith had "ordered" her discharge as an economy measure. Hickey then remarked that she believed that her discharge had been effected because she was wearing a union button and that she was not so "stupid" as to accept the reason Lugoff had given. Lugoff thereupon stated that Hickey's work had been satisfactory and that he regretted her separation.

On August 16, Farley attended the union meeting at Hickey's home. The next day she came to work wearing a union button attached to her belt. When Lugoff appeared at the office on August 18, to discharge Hickey, Farley asked Lugoff if she would also be discharged as she, too, was wearing a union button. Lugoff replied that he was not her supervisor and then placed a telephone call. A few minutes later Murray arrived at the office and gave Farley her pay check, asserting that her termination was due to economic reasons.

The uniformity of pattern and the timing of the several discharges are significant. Ross' discharge occurred on the day that he wore the union button at work for the first time. Hickey had worn her union

button for a day and a half when she was discharged, while Farley's discharge took place after she had worn the union button for a single day. Surely, "the coincidence in time * * * would seem somewhat significant" (*N. L. R. B.* v. *Geraldine Novelty Co., Inc.,* 173 F. 2d 14, 18 (C. A. 2)).

Moreover, the Board's conclusion that the discharges were discriminatorily motivated is fortified by the fact that the reasons advanced for the dismissals do not stand under scrutiny, *N. L. R. B.* v. *Dant,* 207 F. 2d 165, 167 (C. A. 9). Although respondent contended that the three employees were discharged as an economy measure and that it was "losing considerable money," wage increases were granted to nearly all the nonsupervisory editorial employees about one month before Smith issued his "flat ultimatum" to reduce the staff (R. 67; 300, G. C. Ex. 6). A short time after the discharges, respondent hired two editorial employees and advertised in its paper for a classified advertising solicitor (R. 106-107; G. C. Ex. 11). And although respondent asserted that efficiency was a factor in determining those employees to be discharged, Smith told Ross that he was selected because of departmental seniority, despite the fact that an employee with less seniority than Ross was retained. (R. 105-106; G. C. Ex. 6). Moreover, Lugoff testified that Hickey had been selected because of friction between them and yet he had praised her performance on the job and expressed regret at the time of her separation (R. 116; 337).

And finally, various remarks made by respondent's officials strengthen the conclusion reached by the Board. Shortly after Ross was discharged Clark remarked to employee Galt that Ross had worn a union button at work and that he had told Smith that unless Ross was

discharged he would leave his job. Lugoff told Hickey at the time of her discharge that "he was sorry if [Hickey] was mixed up in the Guild because that they would not be able to do anything for [Hickey]." And when Hickey remarked that she did not believe she could be discharged for union activities, Lugoff asserted that he had a similar "situation" several years ago but "nothing ever came of it." Lugoff then stated, "They [the Guild] can't do anything for you." When Murray discharged Farley he remarked, "If economic measures doesn't hold up, we will go into the efficiency of your work."

For all the foregoing reasons, the Board properly rejected respondent's contention that the employees in question were discharged for reasons other than union activities. Moreover, even if it were assumed that respondent would have had valid reasons, economic or otherwise, for discharging the employees, the Board on the instant record was justified in concluding that none of these reasons was the actual ground for the dismissals. "The existence of some justifiable ground for discharge is no defense if it was not the moving cause." *Wells, Inc.* v. *N. L. R. B.,* 162 F. 2d 457, 460 (C. A. 9). See also *N. L. R. B.* v. *L. Ronney & Sons Furniture Mfg. Co.,* 206 F. 2d 730, 737 (C. A. 9), certiorari denied, 346 U. S. 937; *N. L. R. B.* v. *Whitin Machine Works,* 204 F. 2d 883, 885 (C. A. 1).

CONCLUSION

For the reasons stated above, the Board's order should be enforced in full.

Respectfully submitted,

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JULY 1956.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

Sec. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; * * *

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engag-

ing in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to

be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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